2013 IL App (2d) 130450-U
No. 2-13-0450
Order filed December 23, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

DEUTSCHE BANK NATIONAL TRUST COMPANY, as Indenture Trustee for New Century Home Equity Loan Trust 2005-2,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 11-CH-4767
LORIE COLE,	)	
Defendant-Appellant	)	
(Valerie L. Naif, Unknown Owners, and Nonrecord Claimants, Defendants).	)	Honorable Robert G. Gibson, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly confirmed a judicial sale: plaintiff had no obligation to produce the originals of the mortgage and the note; under the appropriate standard, the court had subject-matter jurisdiction; and defendant failed to cogently explain plaintiff's alleged lack of standing.

¶ 2 Lorie Cole, one of two property-owner defendants in a foreclosure action, appeals after the confirmation of the judicial sale of the property and the denial of what the trial court treated as a

motion to reconsider. Because all of the issues that defendant Cole has raised are without merit, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On October 6, 2011, plaintiff, Deutsche Bank National Trust Co., as Indenture Trustee for New Century Home Equity Loan Trust 2005-2, filed a foreclosure complaint concerning the property at 6 West Sunset Avenue, Lombard. The other named defendant was Valerie Naif. Line 3(P) of the complaint stated, "Capacity in which Plaintiff brings this foreclosure: Legal holder of the Mortgage and Note." Attached to the complaint were the mortgage and note instruments, which named New Century Mortgage Corporation as the lender. The documents did not show any obvious endorsement to another and the record at the time did not include an assignment.

¶ 5 On February 3, 2012, with a motion for default judgment pending, the court granted Cole and Naif (defendants) 28 days to file an appearance and answer. On March 28, 2012, they filed a handwritten, *pro se* document that they labeled "Answer." In that document, defendants asked for more time to negotiate a repayment schedule and stated that they expected to seek bankruptcy protection. On April 2, 2012, the court entered a default judgment of foreclosure.

¶ 6 The "answer" does not stand out in any way as unusual for a *pro se* filing. However, later documents filed reflect a deviation from typical civil practice. For example, on August 28, 2012, defendants each filed a "Declaration of PEACE TREATY by a peaceful inhabitant, Non-Combative, Non-Aggressive Inheritor of the LAND." A recurrent theme in both filings is a conceit that the law distinguishes between the "creditable living, self-aware sentient WOMAN" and the "corporation of the Legal Person known by" the particular party's name written in all capital letters.

¶ 7 Defendants continued filing documents in the same vein; we list only a selection. One was "Notice of Felony" with dozens of exhibits, extremely repetitious, most of which defy succinct description. Notable among them is a copy of a "Conditional Money Order" for $349,177.23, supposedly payable to the order of the mortgage servicer. The memo on the document states, in part: "An active Private Issue Account, Treasury Direct Accrual to be passed through The Secretary of the Treasury with the processing of this International Bill of Exchange/Money Order."

¶ 8 On March 19, 2013, defendants filed a document entitled "Presentment & Cause to Vacate Foreclosure Judgment." In this document, defendants suggested that, had they not been slightly delayed on one court date, the court would not have entered a default judgment. Further, they implied that they had satisfied their debt, apparently in some manner consistent with a Redemptionist approach. See *Blocker v. U.S. Bank National Ass'n*, 993 N.E. 2d 1154, 1157 (Ind. App. 2013) (explaining the Redemptionist theory in which citizens can allegedly gain access to the government's "secret accounts" and write "sight drafts" to utilize those funds for their own purposes). Associated with the "Presentment" were 168 pages of exhibits.

¶ 9 On April 15, 2013, the trial court entered an order:

> "The court finding that Defendants' Motion for Presentment and Cause to Vacate Judgment is misplaced and has no legal significance, Defendants' pending motion is denied."

¶ 10 On April 19, 2012, defendants filed a "Presentment and Cause for Emergency Hearing, for Reconsideration to Vacate Foreclosure Judgment, Dismissal of Case, Challenging the Confirmation Sale and Complaint of 'Breach of Fiduciary Duties"; this document, like many other of defendants', is not easily understood. However, defendants did assert in comprehensible language that plaintiff was not the owner of the mortgage; they claimed that, because the recorded copy of the mortgage's

assignment lacked a notary's signature, the assignment was invalid. They also claimed that, because the lender did not sign the note, it was not a contract. This filing also had exhibits that not are amenable to simple description. For instance, there is an "Assignment of Account" in which Cole purports to assign an interest in a "UCC Contract US Treasury Account" to New Century Mortgage—the sum of $364,180.75 is referenced. There is also a copy of an IRS form 1040-V that seems to show Cole paying $364,180.75 to the IRS—however, across the form is written "Pay to the Order of the United States Treasury Dept 1789, w/o Recourse." A "Letter of Advice" addressed to plaintiff says that it informs that "a transaction from assignor's UCC Contract Treasury Account has taken place."

¶ 11 On April 24, 2013, plaintiff filed a motion for confirmation of the judicial sale; a third party, Renew Homes LLC, had placed the winning bid for the property. The trial court granted plaintiff's motion on April 24, 2013. The court also that day denied "Defendants' Motion for Reconsideration"—that is, the second mentioned "Presentment." Cole filed a timely notice of appeal. Although it appears that the appeal was for both defendants, only Cole signed it. Naif's status as a nonparty to this appeal has no effect on the outcome of the appeal.

¶ 12 II. ANALYSIS

¶ 13 Cole's appellate brief is difficult to follow. We are not entirely certain what she is arguing in places. However, we recognize certain strands of argument in the brief. The first is an insistence that the trial court should have required plaintiff to produce the signed original of the mortgage and note. The second is that plaintiff's lack of standing deprived the trial court of subject-matter jurisdiction. The third is that defendants, by showing that the recorded assignment document lacked notarization, showed that plaintiff lacked standing to bring the foreclosure suit. We can quickly

show the first two claims to be incorrect as a matter of law—that is, we see no error even giving Cole the benefit of *de novo* review. Cole has not cogently argued the third, so it must fail. We address each issue in turn.

¶ 14 First, Cole cites no authority showing that plaintiff had any obligation to bring into court the originals of the mortgage and note. In *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, the *Korzen* court examined precisely this issue in detail. It recognized a similar type of document filing process and described those litigants as " 'sovereign citizens.' " *Id.* ¶ 1. The *Korzen* court concluded that, historically, no such original document requirement had existed and that recent mortgage law reforms did not create such a requirement. *Id.* ¶¶ 26-33.

¶ 15 Second, Cole argues that plaintiff failed to satisfy the standing requirement of article III of the United State Constitution (U.S. Const., art. III, § 2), and that the trial court therefore lacked subject-matter jurisdiction. This argument fails for two reasons. The first is that article III applies to the federal courts and was inapplicable to the trial court. The second is that, applying Illinois's closest equivalent to the article III standing requirement, the justiciable-matter requirement, the trial court in fact had subject-matter jurisdiction.

¶ 16 Article III created the federal courts, but presupposed the existence of state courts, so no reason exists to suppose that article III jurisdictional requirements would apply to state courts. The Illinois Supreme Court has made this clear in, for instance, *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252-54 (2010). Cole seems to suggest that the fourteenth amendment to the United States Constitution (U.S. Const., amend. XIV) ended state sovereignty and thus, apparently, turned state courts into some sort of lower division of the federal court system. The United States Supreme Court does not agree with that suggestion:

> "[O]ur Constitution establishes a system of dual sovereignty between the States and the Federal Government. ***
>
> The States *** retain substantial sovereign authority under our constitutional system."

Gregory v. Ashcroft, 501 U.S. 452, 457 (1991).

¶ 17 The "justiciable matter" requirement for subject-matter jurisdiction under the Illinois Constitution (Ill. Const. 1970, art. VI, § 9) is a rough analogue of the article III standing requirement. Applying that requirement, we conclude that the trial court had subject-matter jurisdiction. A justiciable matter is one in which an actual controversy exists. *Ferguson v. Patton*, 2013 IL 112488, ¶ 23. " 'The case must, therefore, present a concrete dispute admitting of an immediate and definitive determination of the parties' rights, the resolution of which will aid in the termination of the controversy or some part thereof.' " *Ferguson*, 2013 IL 112488, ¶ 23 (quoting *National Marine, Inc. v. Illinois Environmental Protection Agency*, 159 Ill. 2d 381, 390 (1994)). The matter cannot be a hypothetical or abstract one. See *Ferguson*, 2013 IL 112488, ¶ 24 (that the matter was not hypothetical or abstract was central to deciding that a justiciable matter existed). Here, plaintiff claimed the right to (with proper steps) cause the sale of defendants' property. Thus, the controversy was anything but abstract, and a justiciable matter existed.

¶ 18 The existence of a justiciable matter is not necessarily an identical question to the existence of standing. We thus note that, to the extent that Cole is arguing that plaintiff had a burden to plead or prove its standing to bring the foreclosure action, she is incorrect as a matter of well-established Illinois law. Lack of standing as such is an affirmative defense. *E.g.*, *Lebron*, 237 Ill. 2d at 252. "A plaintiff need not allege facts establishing that he has standing to proceed"; instead, "it is the

defendant's burden to plead and prove lack of standing." *Wexler v. Wirtz Corp*., 211 Ill. 2d 18, 22 (2004).

¶ 19 Third, Cole implies that defendants showed that they could have presented a lack-of-standing defense based on the lack of notarization of the recorded assignment document. However, Cole does not properly argue this point. A reviewing court is entitled to have the appellant present it "with clearly defined issues, citations to pertinent authority and cohesive arguments"; the appellant cannot expect the court to make the argument for him or her. *Korzen*, 2013 IL App (1st) 130380, ¶10. Cole's brief does not explain how she would get from the lack of notarization on the assignment document to plaintiff's lack of standing. Moreover, the authorities that Cole cites are not pertinent. Because Cole has failed to provide a cohesive argument to support this claim, it must fail.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we affirm the confirmation of the judicial sale and the denial of the filing that the trial court treated as a motion for reconsideration.

¶ 22 Affirmed.